

MINUTES
COLUMBUS BOARD OF ZONING APPEALS
December 18, 2007
COUNCIL CHAMBERS, 2nd FLOOR, CITY HALL
123 WASHINGTON STREET
COLUMBUS, INDIANA

Members Present: Dave Bonnell, Acting Chairperson; Jeff Sharp, and Eric Frey

Staff Present: Laura Thayer, Assistant Planning Director; Jeff Berman, Executive Director; Heather Pope and Thom Weintraut, Senior Planners; Rae-Leigh Stark and Emilie Pannell, Associate Planners; Stephanie Carr, Code Enforcement; and Alan Whitted, Deputy City Attorney

PUBLIC MEETING

Dave Bonnell, Acting Chairperson, opened the meeting with a brief explanation about the Board and its responsibilities.

Alan Whitted, Deputy City Attorney, administered the oath to all in attendance that would be speaking.

NEW BUSINESS REQUIRING BOARD ACTION

DOCKET AA-07-01: JIM AND CAROL DAILY

Jim and Carol Daily have appealed an administrative decision related to denial of an application for approval of a temporary farm market (C/ZC-07-175-Oct.) The property is zoned B-5 (General Business) and is located between 840 and 850 Jonesville Road in Columbus Township.

Appeal Element #1

Mr. Bergman began the meeting by addressing the Board, and a visual presentation was made.

He said the Daily's appeal is based on their assertion that the Planning Department has misapplied two separate provisions of the Columbus Zoning Ordinance.

He said that tonight the Board is to decide whether or not the Planning Department has correctly interpreted and applied the requirements of the Zoning Ordinance to the application in question.

Mr. Mike Neville, attorney for the petitioners, stated his name and address for the record. There was a visual presentation made.

He said that the petitioner believes the parcel to be legally created, recorded, taxed and transferred, since the first 5 acre tract was established via the Bartholomew Circuit Court in 1973 and modified to 2.1 and 2.9 acre tracts, also 1973.

Mr. Bergman stated that the Planning Department believes that the property on which the Dailys would like to operate their farm market is not a lawfully created lot and is therefore not developable until it has been platted. He said the Planning Department recognized that this property was recorded, taxed, and transferred since its creation in 1973, but that its creation did not comply with the subdivision control ordinance in effect at that time.

Eric Frey made a motion to uphold the Planning Department's decision on **Appeal Element #1** that the property must be platted prior to use. Jeff Sharp seconded the motion, and it passed 3-0.

Appeal Element #2

Mr. Bergman indicated that staff believes the Daily property cannot be accessed from the adjacent private right-of-way without approval of the Plan Commission.

Mr. Bergman read the background of **Appeal Element #2** into the record.

He stated that the Planning Department believes that (1) creating a new access easement or private right-of-way, (2) allowing additional lots to use an existing access easement or private right-of-way, and (3) altering the design of the construction of an access easement or private right-of-way requires the review and approval of the Plan Commission.

Mr. Bergman said that the Planning Department believes that the provisions of the Subdivision Control Ordinance clearly establish the role of the Plan Commission in reviewing and approving the use, design, and maintenance of access easements and private right-of-way.

Mr. Neville stated the petitioners have a signed license agreement by the adjacent property owners to use the private right-of-way and the Plan Commission has no jurisdiction over the private licensing.

Jeff Sharp made a motion to uphold the Planning Department's decision on **Appeal Element #2**. Eric Frey seconded the motion and it passed 3-0.

FINDINGS OF FACT

The following findings of fact were presented to the Board for consideration.

C/DS-07-01: SUNHAM HOME FASHIONS, LLC:

Eric Frey made a motion to accept the findings of fact. The motion was seconded by Jeff Sharp and passed 3-0.

C/DS-07-08: DAVID AND DEBRA NESS

Jeff Sharp made a motion to accept the findings of fact. The motion was seconded by Eric Frey and passed 3-0.

C/CU-07-02: ERIC SIMO

Jeff Sharp made a motion to accept the findings of fact. The motion was seconded by Eric Frey and passed 3-0.

C/CU-07-03: PERR INVESTMENTS

Eric Frey made a motion to accept the findings of fact. The motion was seconded by Jeff Sharp and passed 3-0.

APPROVAL OF MINUTES

Upon the motion made by Eric Frey, the October 23, 2007 minutes were approved with the correction of the spelling of his last name. The motion was seconded by Jeff Sharp and passed 3-0.

DISUSSION

There being no further business the meeting was adjourned.

Dave Bonnell, Acting Chairperson